IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1951 of 2004

in

SPECIAL CIVIL APPLICATION No 396 of 2004

with

CIVIL APPLICATION No 8630 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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Versus

GULZARSINGH - RETIRED CHIEF ENGINEER C.P.W.D.

Appearance:

MR RK MISHRA for Appellant

RULE UNSERVED for Respondent No. 1

MR CJ VIN for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE M.C.PATEL

Date of decision: 21/02/2005

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE B.J.SHETHNA)

Though appeal was admitted on 25th October, 2004 by the Division Bench of this court, we have thought it fit to dispose it of today by this order at the time of hearing of Civil Application No.8630 of 2004 as it was brought to our notice by learned counsel Shri Vin appearing for the respondent no.2 that by suppressing the material fact of a subsequent order dated 20th October, 2004 passed by the learned Single Judge in Miscellaneous Civil Application No.1930 of 2004 filed in main Special Civil Application No.396 of 2004, he has got his appeal admitted from the Division Bench of this court on 25th October, 2004 and obtained order of interim relief in the above Civil Application No.8630 of 2004. From the order dated 7th October, 2004 passed by the learned Single Judge disposing of Special Civil Application No.396 of 2004, it is clear that though Mr. Vin for the opponent raised preliminary objections regarding maintainability of the writ petition under Article 226 of the Constitution, the learned Single Judge, without deciding the said contention, passed the order on consent, which is more than clear from his subsequent order dated October 20, 2004 passed in Miscellaneous Civil Application No.1930 of 2004. From a bare look at the prayers made in the main writ petition by the appellant petitioner, it is clear that no writ petition would be maintainable in such matter against the private respondent, which is a company. Merely because Arbitrator was joined as respondent in the petition would not mean that the petition would be maintainable.

2. As stated earlier, it was a consent order and having given the consent, it was not open to the appellant - petitioner to challenge the said order in appeal. It was a consent order, which is clear from the subsequent conduct of the appellant - petitioner in filing Miscellaneous Civil Application No.1930 of 2004 seeking extension of time. But somehow or the other, on the date of hearing his Miscellaneous Civil Application, a request was made to decide the application on merits on the ground that the appellant - petitioner wants to challenge his earlier order dated 7th October, 2004

passed in his main petition before the Division Bench of this court by way of Letters Patent Appeal. The learned Single Judge rejected the said Miscellaneous Civil Application by his order dated 20th October, 2004 clearly stating in his order that his earlier order dated 7th October, 2004 was a consent order-ad invitum. Such an order ought to have been annexed and brought to the notice of the Division Bench by the appellant petitioner in his Letters Patent Appeal but without placing it on record and bringing it to the notice of the Division Bench, the appellant got his appeal admitted and got the stay order against the previous order dated 7th October, 2004 passed by the learned Single Judge in this petition. Thus, on the ground of suppression of material fact also, this appeal was required to be dismissed.

3. In view of the above discussion, this appeal fails and is hereby dismissed on all the three grounds. Once appeal is dismissed, Civil Application has to be dismissed and accordingly, it is dismissed. Rule discharged. Interim relief granted on it stands vacated forthwith.

(B.J. Shethna, J.)

(M.C. Patel, J.)

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